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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,973	11/26/2003	Geoff C. Gerhardt	19921/66	9505
7590	12/12/2006			EXAMINER THERKORN, ERNEST G
Brian L. Michaelis, Esq. Brown Rudnick Berlack Israels LLP One Financial Center Boston, MA 02111			ART UNIT 1723	PAPER NUMBER

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/723,973	GERHARDT ET AL.
	Examiner Ernest G. Therkorn	Art Unit 1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 November 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-17 are rejected under 35 U.S.C. 102(B) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075). Weissgerber (U.S. Patent No. 6,627,075) will serve as a translation of each of Weibgerber (German Patent No. 19,914,358 A1) and Weibgerber (German Patent No. 19,914,358 C2). The claims are considered to read on either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075). However, if a difference exists between the claims and either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075), it would reside in optimizing the elements of either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075). It would have been obvious to optimize the elements of either Weibgerber (German Patent No.

19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075) to enhance measurements.

Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075) and either Spraul (U.S. Patent No. 6,402,946) or Zimmermann (European Patent No. 1,248,096). Weissgerber (U.S. Patent No. 6,627,075) will serve as a translation of each of Weibgerber (German Patent No. 19,914,358 A1) and Weibgerber (German Patent No. 19,914,358 C2). At best, the claims differ from either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075) in reciting calculating the split ratio. Spraul (U.S. Patent No. 6,402,946) (column 2, lines 8-25 and column 8, lines 8-10) discloses split ratios of splitters between liquid chromatography columns and detectors vary their ratios to provide an exact flow. Zimmermann (European Patent No. 1,248,096) (column 1, lines 18-22, column 2, lines 11-13 and 34-38) discloses that splitters for dividing chromatographic flows into excess and working fluid streams may be preset or varied. It would have been obvious to calculate the split ratio in either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075) either because Spraul (U.S. Patent No. 6,402,946) (column 2, lines 8-25 and column 8, lines 8-10) discloses split ratios of splitters between liquid chromatography columns and detectors vary their ratios to provide an exact flow or because Zimmermann (European Patent No. 1,248,096)

(column 1, lines 18-22, column 2, lines 11-13 and 34-38) discloses that splitters for dividing chromatographic flows into excess and working fluid streams may be preset or varied.

The remarks urge patentability based upon the allegation that Weissgerber (U.S. Patent No. 6,627,075) does not show measuring a waste flow rate, subtracting the waste flow rate from the main flow rate, and dividing the two to determine the ratio. However, Weissgerber (U.S. Patent No. 6,627,075) (column 6, lines 51-62) discloses the "excess flow is the difference between the total flow (32) transported by pump arrangement 30 and the working flow 35 required for separation analysis in the separation column." As such, one of the two subdivided flow paths can be calculated from the total flow minus the other subdivided flow path. Having the total flow path and the two subdivided flow paths inherently gives the practitioner the split ratio. This is particularly true where Weissgerber (U.S. Patent No. 6,627,075) (column 8, lines 22-26) discloses the flow ratio is decisively determined.

The remarks urge patentability based upon the elimination of an elaborate calibration procedure. However, the claims do not preclude the use of a calibration procedure.

The remarks urge that there is no motivation to calculate the split ratio. However, Spraul (U.S. Patent No. 6,402,946) (column 2, lines 8-25 and column 8, lines 8-10) discloses split ratios of splitters between liquid chromatography columns and detectors vary their ratios to provide an exact flow. Zimmermann (European Patent No. 1,248,096) (column 1, lines 18-22, column 2, lines 11-13 and 34-38) discloses that

splitters for dividing chromatographic flows into excess and working fluid streams may be preset of varied. As such, it would have been obvious to calculate the split ratio in either Weibgerber (German Patent No. 19,914,358 A1) or Weibgerber (German Patent No. 19,914,358 C2) in view of Weissgerber (U.S. Patent No. 6,627,075) either because Spraul (U.S. Patent No. 6,402,946) (column 2, lines 8-25 and column 8, lines 8-10) discloses split ratios of splitters between liquid chromatography columns and detectors vary their ratios to provide an exact flow or because Zimmermann (European Patent No. 1,248,096) (column 1, lines 18-22, column 2, lines 11-13 and 34-38) discloses that splitters for dividing chromatographic flows into excess and working fluid streams may be preset of varied.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to E. Therkorn at telephone number (571) 272-1149. The official fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Ernest G. Therkorn**  
**Primary Examiner**  
**Art Unit 1723**

EGT  
December 7, 2006